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No. 83-498

IN THE

Supreme Court of the United States

October Term, 1983

G. MICHAEL BROWN, DIRECTOR DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, STATE OF NEW JERSEY; DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, STATE OF NEW JERSEY and THOMAS KEAN, GOVERNOR, STATE OF NEW JERSEY,

Appellants,

v.

HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 54 and FRANK GERACE, PRESIDENT, HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 54,

Appellees.

On Appeal from the United States Court of Appeals for the Third Circuit

MOTION TO AFFIRM

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Dated: October, 1983

COCKLE PRINTING CO., 2311 Douglas St., Omaha 68102

MOTION

Appellees, Hotel and Restaurant Employees and Bartenders International Union Local 54 and Frank Gerace, President Hotel and Restaurant Employees and Bartenders International Union Local 54, hereby move this Honorable Court to affirm the decision of the Court below on the basis that the questions on which the decision of the cause depends are unsubstantial and do not warrant further argument.

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Appellees.

On Appeal from the United States Court of Appeals for the Third Circuit

MOTION TO AFFIRM

STATEMENT OF THE CASE

This matter is before this Court on Appeal from the United States Court of Appeals for the Third Circuit. Appellants herein, the New Jersey Casino Control Commission and New Jersey Division of Gaming Enforcement seek the reversal of the Third Circuit's decision holding that Section 93 of the New Jersey Cacino Control Act, NJSA 5:12-93, is unconstitutional pursuant to the supremacy clause of the United States Constitution, Article VI, Clause 2. At the heart of the controversy at hand is the attempt by the Appellants to enforce Section 93 and Sec-

tion 86, as incorporated therein, of the New Jersey Casino Control Act, NJSA 5:12-93 and 86, against Appellee, Hotel and Restaurant Employees and Bartenders International Union Local 54.

Appellant, New Jersey Division of Gaming Enforcement is a branch of the New Jersey Department of Law and Public Safety created by the New Jersey Casino Control Act, NJSA 5:12-1 et seq. and is vested with the statutory duty and authority to conduct investigations under said Act and to seek enforcement of the terms thereof. Appellant, New Jersey Casino Control Commission, is an administrative agency also created under said State Act and is vested with the statutory duty and authority to administer and enforce the terms thereof.

Appellee, Local 54, is an unincorporated labor organization within the meaning of Section 2(5) of the National Labor Relations Act, as amended (App. B, 88a).[1] It represents and engages in collective bargaining activities on behalf of approximately 12,000 employees. Approximately 8,000 said employees are employed in traditional hotel and restaurant service, *non-gaming* capacities in the Casino Hotel Industry in Atlantic City, New Jersey. The balance of its membership is employed, for the most part, in non-casino hotel and restaurant service related industries. (Plaintiffs' Exhibit 9).

By virtue of Local 54's collective bargaining efforts, its entire membership, both those employed in casino hotels and those employed in non-casino hotel operations,

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[1]References to an Appendix refer to Appellee's Joint Appendix to Jurisdictional Statements. References to other documents refer to documents contained in Appellees' Exhibits in support of motion.

participates in the Hotel and Restaurant Employees and Bartenders International Union Welfare and Pension Funds and the Hotel and Restaurant Employees and Bartenders International Union Local 54 Severance Fund. These are jointly administered employee benefit funds established pursuant to Section 302 of the Taft Hartley Act and 29 U. S. C. Section 186, and regulated and administered pursuant to the terms of the Employee Retirement Income Security Act, 29 U. S. C. 1001 et seq. Appellee, Frank Gerace, President of Local 54, is a Trustee to the International Welfare and Pension Funds (App. B, 88a). Mr. Gerace, and other officers of the Union are Union Trustees to the Severance Fund. (Plaintiffs' Exhibits 5 & 8).

At the inception of the Casino Industry in Atlantic City, Local 54 had been functioning for many years as the duly authorized collective bargaining agent for employees of those hotels which were converting to casino operations. At the inception of casino gambling, however, Local 54 was faced with a new piece of State Legislation, Section 93 of the Casino Control Act, NJSA 5:12-93, which required that Local 54 and its officers and agents register with the Casino Control Commission and subject itself to the Commission's regulation as a condition of continued representation of these very same employees. Despite a clear and overriding policy of advice that certain provisions of the New Jersey Casino Control Act, including Section 93, as they apply to labor organizations, violated preempted and federally guaranteed rights, Local 54 filed its initial registration statement and complied with all documentary steps which the New Jersey Act directed be followed by the Union and certain of its officers. These fil-

ings were made as required, some as early as 1978, and were in the files of the Appellants for an extensive period of time without any questions or any objections being raised. It should be underscored that by filing the documents neither Local 54 nor any of the individuals who filed the directed forms waived or in any way indicated an intent to waive the position that there was neither jurisdiction of the New Jersey Casino Control Act nor applicability of its provisions to labor organizations. However, Local 54, being confronted with the serious and demanding responsibility of collective bargaining representation of thousands of employees, had no desire to drain its energies in litigating obligations with which it had no difficulty in complying. Accordingly, Local 54 filed its initial registration statement and maintained its status without challenge until May, 1981.

On May 11, 1981, the New Jersey Division of Gaming Enforcement filed with the Casino Control Commission a complaint by letter alleging certain violations of Section 86 of the Casino Control Act by Local 54 and some of its officers and further requested, pursuant to Section 93(b), that the Commission revoke Local 54's registration and prevent the Local from collecting Union dues from or administering Health and Welfare and Pension Funds on behalf of Casino and Casino Hotel Industry employees which it represents (App. D, 132a).

On June 1, 1981, the New Jersey Casino Control Commission held a pre-hearing conference as a result of the complaint filed by the Division of Gaming Enforcement. From the conference, several issues emerged which were to be briefed and argued at further proceedings in front of the Commission including the issue of whether Section

93 of the State Act was preempted by the National Labor Relations Act, as amended, 29 U. S. C. Section 141 et seq. and by ERISA, 29 U. S. C. Section 1001 et seq. Ultimately, on August 5, 1981, the Commission determined to continue with its proceedings notwithstanding the preemption issues which had been raised.

As a result, on August 17, 1981, Appellees filed suit in the United States District Court for the District of New Jersey claiming, among other issues, that Section 93 of the New Jersey Casino Control Act was preempted by the Labor Management Relations Act and Employee Retirement Income Security Act. Appellees also filed at that time an Order to Show Cause requesting a temporary restraining order and a Motion for Preliminary Injunctive Relief seeking to have Appellants, Casino Control Commission and Division of Gaming Enforcement enjoined from taking any steps in furtherance of the enforcement of Section 93 of the State Act pending a final determination by the District Court of the issues raised in the pending suit. At a hearing held on that date, the Court below requested and ultimately received from the Appellants an agreement to hold all State proceedings in abeyance pending the Court's determination of the pending Motion. On December 1, 1981, a hearing was held on Appellee's Motion for Preliminary Injunctive Relief. Uncontroverted evidence by way of affidavit, was entered of record by agreement of the parties (Plaintiffs' Exhibits 5 through 9). On March 22, 1982, the District Court denied the Motion and thereafter, Appellees herein filed a timely appeal to the United States Court of Appeals for the Third Circuit.

During the pendency of the Appeal before the Third Circuit, the proceedings before the New Jersey Casino Control Commission continued without abatement. On

September 28, 1982, the Commission rendered its decision disqualifying Local 54 and ordering that it be barred from collecting dues from employees employed in casino hotels. (App. D, 131a). The Commission based its decision on its finding that two officials of the Union had violated Section 86(f) of the State Act, NJSA 5:12-86(f), by associating with individuals involved in organized crime and that one official was in violation of Section 86(c), NJSA 5:12-86(c) as a result of a prior criminal conviction.[2] The Commission further ruled that Local 54 could avoid the sanctions imposed if the officials involved were removed from office (App. D, 197a). A supplemental decision was issued by the Commission on October 12, 1982 holding in abeyance the additional sanctions of barring the administration of employee benefit funds. The Commission made clear, however, that it viewed itself fully empowered to levy such a sanction if deemed necessary (App. F, 208a).

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[2]Contrary to the Appellant's assertions, it should be noted that at no time did the Commission find that in fact Local 54, its officers or agents were influenced by any member of organized crime with respect to the conduct of the Union's affairs. To the contrary, the Commission admitted that it had no evidence that any officer or agent of the Union had breached any fiduciary obligations, committed any unlawful conduct, or had made any Union related business decisions due to the influence of organized crime. The Commission's decision further made clear that it in fact had been presented with no evidence that organized crime was even attempting to gain access to the Casino Industry via an association with Local 54 or its officials (App. D, 176a).

It should also be noted that the disqualification based on the prior criminal conviction involving the conduct of an official many years prior to his involvement with Local 54 was totally unrelated to labor matters. At the time of the Commission's ruling, the individual involved had long since fulfilled the penalties that had resulted from his conviction and was fully eligible to hold Union office under federal law. (App. D, 203a-204a).

As a result of the Commission's decision, Appellees obtained temporary injunctive relief from the District Court pursuant to Rule 62(c) of the Federal Rules of Civil Procedure. On June 6, 1983, the Third Circuit issued its decision finding Section 93 of the State Act to be preempted by the Labor Management Relations Act, 29 U. S. C. Section 141 et seq. and Employee Retirement Income Security Act, 29 U. S. C. 1001 et seq. and reversed the District Court's refusal to grant preliminary injunctive relief.[3] Thereafter, Appellant's Motion for Rehearing was denied and the instant appeal was filed.

ARGUMENT

THE QUESTIONS PRESENTED ON APPEAL ARE NOT SUBSTANTIAL

1. It is Well Established that the States Cannot Attempt to Regulate the Status of a Labor Organization as the Collective Bargaining Agent for Employees Employed in an Industry in Interstate Commerce.

Appellants have in essence based their appeal on the contention that the Third Circuit improperly determined that the Labor Management Relations Act, 29 U. S. C. 141 et seq. and more particularly the rights set forth in Section 7 thereof, 29 U. S. C. Section 157, preempt the State of New Jersey from exercising its police powers in what the Appellants characterize as an area of particular and

[3] In the aftermath of Commission's decision, Appellees herein also filed an appeal with the Superior Court of New Jersey, Appellate Division. This was done solely to preserve the instant Appellee's right of appeal in that forum, under the State Rules, in the event that the Third Circuit rendered a decision making it appropriate to continue with further State proceedings. At no time was this a waiver of the Appellee's rights to have the federal issues involved resolved by the federal courts. Upon issuance of the Third Circuit's decision the State Appeal was dismissed without prejudice.

deeply rooted local concern. This, however, does not accurately reflect the nature of the industry in question and the specific regulatory scheme in issue as it applies to the Appellees.

The Casino Hotel Industry in Atlantic City, from its very inception, has been anything but a local State industry. It is a multi-faceted industry involving billions of dollars of interstate commerce annually. Patrons in vast numbers are sought and drawn by slick promotional campaigns from all over the country. Workers have travelled from equally diverse corners to fill the tens of thousands of jobs which have been made available as a result of the industry's development. Goods and services essential to the daily operation of the casinos and casino hotels are procured routinely in staggering quantities from numerous other industries involving interstate commerce. In this regard, judicial notice should be taken that the National Labor Relations Board has exercised its jurisdiction in this industry on numerous occasions. (See Trans. of Hearing of December 1, 1981, at Page 38).

Furthermore, the regulation which the Appellants seek to impose on the Appellees does not even in fact involve the regulation of gaming activities themselves. Appellee, Local 54 serves as a collective bargaining agent for hotel and restaurant service employees employed in casino hotels, *not* gaming employees. The employees represented by the Union are not the cooks, bartenders, waitresses, bellmen, chambermaids, and other employees involved in typical hotel and restaurant services. They are not the dealers, casino cashiers, security guards, or other employees actually involved in gaming activities. (Plaintiffs' Exhibit 9) The employees represented by Local 54 are no different than any other hotel and res-

taurant service employee throughout the country. The ability of the state to regulate the representational status of a labor organization representing the types of employees represented by the Appellees does not involve the regulation of gaming itself and can hardly be viewed as a matter of particular local concern or sensitivity.

In addition, the state statutory scheme which Appellants seek to vindicate goes far beyond the regulation of gaming and prevention of corruption which Appellants have characterized as the exercise of the State police power in an area of deeply rooted local concern. It is a scheme which impacts directly on a federal statutory scheme and policy designed to foster and implement a uniform system of labor relations throughout all industries involving significant interstate commerce. Contrary to the Appellant's assertions, Section 93 of the Casino Control Act, NJSA 5:12-93, when taken in the context of the entire State statutory framework of which it is a part, does not merely protect the Casino Industry from corrupt individuals who serve as union officials. Section 93 is designed to enable the State to directly regulate the representational status and ability of a labor union, as an institution, in its capacity as collective bargaining agent for employees in a major industry in interstate commerce. Section 93 impermissibly conflicts with the rights of those employees to select the institution itself as their bargaining representative. On this basis alone, without considering the question of the selection of individual officers, Section 93 is violative of rights protected by Section 7 of the Labor Management Relations Act. A close review of the State regulatory scheme makes this clear.

Section 93 of the Casino Control Act requires labor organizations and their officers, agents and principal em-

ployees, who are otherwise duly authorized pursuant to Federal law to represent employees in a major industry in interstate commerce, to register with the Commission as a *condition precedent* to functioning in such a representational capacity. A union and those of its employees covered by the State Act have no choice in this regard. The failure to register and provide the requisite information set forth in Section 93(a) constitutes a disqualification under Section 86(b) and triggers the sanctions contained in Section 93(b). Furthermore, if a union, its officers, agents or principal employees attempt to function in a representational capacity without registering pursuant to Section 93(a), they are also subject to the criminal sanctions and penalties provided by Section 117 of the State Act, NJSA 5:12-117.

The failure to register or provide any other information required by either the Commission or the Division also constitutes violations of Section 78 and Sections 80(b), (c), and (d) of the State Act, NJSA 5:12-78, 80(b), (c), and (d). In order to enforce the disclosure of information required by Section 93(a) or these other Sections the Commission can also issue an order requiring such disclosure with contempt powers to enforce compliance therewith as set forth in Section 107(c), NJSA 5:12-107(c).

Once a union and its officers, agents, and principal employees register, a system of review and investigation is triggered wherein the union and its registered employees are under a continuing obligation, pursuant to Section 78 and 80 of the State Act to provide the Appellants with any and all information deemed relevant. The failure to provide such information again triggers a disqualification under Section 86(b) and the sanctions con-

tained in Section 93(b). Again, the Commission can invoke contempt powers under Section 107(c) to enforce compliance with its order to produce the demanded information. Upon a determination that any of the officers, principal employees or agents or a labor organization are disqualified under Section 86 of the State Act, the sanctions set forth in Section 93(b) again are implemented.

The scope of the information a Union and its employees are required to disclose to the Appellants under the State Act is exceptionally broad based and tantamount to being required to disclose every conceivable business record maintained by a Union which the Appellants in their unlimited discretion, deem is relevant.

The scope of disqualifying criteria set forth in Section 86 of the State Act, pursuant to which the sanctions set forth in Section 93(b) are imposed, is equally broad. Union officials can be disqualified for any one of dozens of criminal offenses, from misdemeanors to felonies, for failing to *cooperate* with the Appellants, for being a Defendant in a *pending* criminal matter, for engaging in conduct violative of "public policy" for economic gain, or for *associating* with career offenders. Many of these disqualifying criteria have nothing at all to do with the prevention of corruption and the infiltration by organized crime in the Casino Industry.

The enforcement powers which have been granted to the Appellants are extraordinary and invite a total disruption of legitimate union activity. If a union refuses to provide *any* information demanded by the Appellants, the union and its officers are subject to contempt sanctions as well as disqualification and the sanc-

tions set forth in Section 93(b). If the union and its officials fail to register but attempt to function as collective bargaining agents, notwithstanding that they may be duly certified by the National Labor Relations Board, they are subject to criminal sanctions and, again, contempt proceedings. Finally, if officials of a Union are found to be disqualified for any of the reasons set forth in Section 86, again the sanctions set forth in Section 93(b) are invoked. These sanctions, particularly the bar to the collection of dues, are designed to control the functional ability of a labor organization and in practical terms prevent its functioning except upon conditions set by the State.

It is within this total statutory context that the constitutional infirmity of Section 93 of the Casino Control Act must be measured. It must be noted that the Appellees are not contending that the State cannot exercise its police powers to regulate the Casino Industry and prevent the incursion of organized crime through illegitimate labor activity. However, the *specific method* which the State has chosen to achieve this goal goes to the heart of the uniform system of labor relations mandated by the Labor Management Relations Act. While Section 93 of the Casino Control Act may be viewed as one part of a comprehensive scheme to regulate gambling, it pursues this purpose by directly and unequivocally regulating the representational status and functioning of labor organizations that have been duly selected under the federal regulatory scheme to serve as the collective bargaining agent for workers employed in a major industry involving an enormous amount of interstate commerce. It pursues this purpose by empowering the State, via the Casino Control Commission, to effectively terminate rep-

resentational activity, in a broadly defined "Casino Industry," of labor organizations which do not meet State imposed criteria. It is here that the State's scheme most obstrusively runs afoul of the Section 7 rights and regulatory scheme established under the Labor Management Relations Act.

This Court has consistently held that where rights guaranteed under Section 7 of the Labor Management Relations Act, 29 U. S. C. 157, are impeded or frustrated by State laws, that the State laws are invalid and must yield to the federal enactment. This was made abundantly clear in *Electric Railway Employees v. Wisconsin Employment Relations Board,* 71 S. Ct. 359 (1951), where this Court held that the National Labor Relations Act of 1947, in which Section 7 was first articulated, preempts the field covered by this Act and further that the National Labor Relations Act and its successor, the Labor Management Relations Act are the supreme law of the land under Article VI of the Constitution. This Court held therein that any State law which conflicts with the rights created under the federal act cannot stand.

These principals have been reiterated by this Court over the ensuing years in *San Diego Building Trades Council v. Garmon,* 79 S. Ct. 773 (1959) and in *Nash v. Florida Industrial Commission,* 88 S. Ct. 362 (1967). In *San Diego Building Trades Council v. Garmon, supra,* this Court stated:

> When it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by Section 7 of the National Labor Relations Act, or constitute an unfair labor practice under Section 8, due regard for the federal enactment requires that State jurisdiction must yield. To leave the States

> free to regulate conduct so plainly within the central aim of federal regulation involves too great a danger of conflict between power asserted by Congress and requirements imposed by State law. (79 S. Ct. 773 at 779).

In the instant case, the State of New Jersey has attempted to do just that which this Court has declared as proscribed. The State has attempted to regulate conduct "plainly within the central aim of federal regulation." While the State contends its purpose is to prevent corruption of the Casino Industry, it has sought to achieve this purpose by legislation which goes to the very heart of the application of rights under Section 7 of the Labor Management Relations Act. Via Section 93 of the Casino Control Act and the other various sections of the Act which apply to labor organizations as a result thereof, the State has given itself the power to in essence "certify" or "decertify"a labor organization as the collective bargaining agent for employees employed in a major industry in interstate commerce. If the State deems a labor organization to be "unsuitable" as a result of a violation of any of the State Act's requirements, the State has empowered itself to effectively terminate the labor organizations functioning in a representational capacity. The State can so act notwithstanding that the labor organization has been duly authorized to act as a bargaining agent pursuant to the terms and policies of the Labor Management Relations Act and procedures of the National Labor Relations Board. This is the clear import and effect of the registration requirements of Section 93 and the criminal and civil sanctions the State can levy under Sections 93(b), 107(c) and 117 of the State Act.

This Court had occasion to review a state legislative scheme similar in many respects to that in issue here and

vigorously condemned it. The case of *Hill v. Florida*, 65 S. Ct. 1373 (1945) involved a statute of the State of Florida which regulated unions by requiring that all unions operating therein file a registration statement and pay a registration fee. The statute further provided that all those who sought to function as a business agent for a union had to apply to the State for a license and establish, among other things, a history free from any criminal convictions and, in addition, good moral character.

This Court found the State Act to impermissibly interfere with the rights of employees under the National Labor Relations Act to select a collective bargaining representative of their own choosing and further found that the State Act interfered with collective bargaining and thereby impermissibly frustrated the collective bargaining policies promoted and mandated by Congress.

In reviewing Section 4 of the Florida statute, the portion which set forth the licensing criteria for business agents employed by a union, this Court stated:

> It is apparent that the Florida statute has been so construed and applied that the union and its elected representative are prohibited from functioning as collective bargaining agents, or in any other capacity, except upon conditions fixed by Florida. The declared purpose of the Wagner Act, as shown, in its first section, is to encourage collective bargaining, and to protect the "full freedom" of workers in the selection of bargaining representatives of their own choice. To this end, Congress has made it illegal for an employer to interfere with, restrain or coerce employees in selecting their representatives. Congress attached no conditions whatsoever to their freedom of choice in this respect. Their own best judgment, not that of someone else, was to be their guide. "Full freedom" to choose an agent means freedom to pass upon that agent's qualifications. 65 S. Ct. at 1374.

This Court in *Hill* also reviewed Section 6 of the Florida statute which required the actual registration as a condition to acting in representational capacity. This Court stated:

> Section 6, as here applied, stands no better. The requirement as to the filing of information and the payment of $1.00 annual fee does not, in and of itself, conflict with the Federal Act. But for failure to comply, this union has been enjoined from functioning as a labor union. It could not be without violating the injunction and also subjecting itself to the possibility of criminal punishment even attempt to bargain to settle a controversy or a strike. It is the sanction here imposed, and not the duty to report, which brings about a situation inconsistent with the federally protected process of collective bargaining. Cf. *Western Union Telegraph Co. v. Commonwealth of Massachusetts,* 125 U. S. 530, 553, 554, 8 S. Ct. 961, 965, 966, 31 L. Ed. 790; *Kansas City Southern R. Co. v. Kaw Valley Drainage District,* 233 U. S. 75, 78, 34 S. Ct. 564, 565, 58 L. Ed. 857; *St. Louis Southwestern Ry. v. State of Arkansas,* 235 U. S. 350, 368, 35 S. Ct. 99, 104, 59 L. Ed. 265. This is true because if the union or its representatives acted as bargaining agents without making the required reports, presumably they would be liable both to punishment for contempt of Court and to conviction under the misdemeanor section of the Act. Such an obstacle to collective bargaining cannot be created consistently with the Federal Act. (65 S. Ct. at 1375).

In the instant case, Section 93 of the Casino Control Act is similarly defective. Here, the State of New Jersey has also promulgated criteria which must be met in order for a labor organization to function in a representational capacity. Not only must a union and its officials register with the State as a condition precedent to the union acting as a collective bargaining agent but the union and its officials must meet all of the requirements of Sections 78,

80(b), (c), and (d), and 86 of the State Act in order for the Union to continue to act in its representational capacity. If a union and its officials refuse to register, criminal sanctions and civil contempt penalties can be imposed under Sections 117 and 107 and if a union or its officials refuse to provide any information demanded by the State, or otherwise fail to meet the standards set forth in Section 86, the sanctions contained in Section 93(b) are imposed against the union. The sanctions which the State is empowered to impose, particularly those of a criminal nature under Section 117 and those set forth under Section 93(b) have the practical effect of terminating the representational activities of the union as an institution thereby denying employees the collective bargaining agent of their choosing.

The Appellants contend that *Hill v. Florida, supra,* is inapplicable to the instant case on the basis that the former involved regulation of all unions while the latter involves only labor organizations functioning in a particular industry. This distinction is specious, however, for it invites a piecemeal erosion of the congressional labor relation policies set forth in the Labor Management Relations Act. Once it is established that a major industry in interstate commerce can be singled out as a sensitive industry of particular local concern to a particular state and thereby removed from the central core of the federal regulatory scheme for labor relations, the door will be opened to invite other states to similarly identify other industries and enact similar state legislation.

Further, such a distinction embodies an artificial concept of union representation of employees employed in the casino industry. With the exception of employees actually engaged in gaming activities, the employees employed in

the casino hotels are the same types found throughout the State of New Jersey in positions totally unrelated to the casino hotel industry. They are bartenders, cooks, waitresses, chambermaids, parking lot attendants, janitorial workers, and other types of employees normally associated with service industries. A union which represents these types of employees in the casino industry may very well represent the same types of employees outside of the casino industry. Such a union is not a bifurcated institution; it is a single entity simply representing certain kinds of employees in a particular geographic area. These employees, both casino hotel and non-casino hotel, are represented by the same union with the same officials and agents. An attempt by the State to segregate these representational activities into "casino related" and "non-casino related" is simply a fiction and the regulation of the former amounts to the regulation of the latter. Local 54 is a case in point. In addition to the casino hotel employees it represents, Local 54 represents several thousand employees outside of the Casino Industry (Plaintiffs' Exhibit 9). Any attempt by the State of New Jersey to sanction Local 54 under the terms of the Casino Control Act impacts inexorably on those aspects of Local 54's representational activities outside the purview of the State Act (Plaintiffs' Exhibits 5 through 9). The total pool of union dues remitted to the Union by all of its members fund all of the representational activities on their behalf. If the union removed disqualified officials to avoid sanctions imposed by the Casino Control Commission, it would be removing officials placed into office not just by casino hotel employees but also by the several thousand non-casino employees who also make up Local 54's membership. Accordingly, it is misleading and inaccurate for the Appel-

lants to contend that the enforcement of Section 93 of the Casino Control Act is limited in impact to the Casino Industry. The State Act impacts adversely in a material manner on all representational activities of a union, both within and outside of the Casino Industry, and hence, impacts adversely on the overall labor relations policies which Congress established for all industries in interstate commerce.

The Appellants further contend that the Third Circuit erred by applying a strict preemption doctrine to the State's attempt to regulate the representational status of the Appellee union. The Appellants assert that instead a balancing of the federal and State interests involved should have been undertaken to reach an accommodation of federal policies and matters of deeply rooted local concern. The Appellants contend that this Court has abandoned the precepts of *San Diego Building Trades Council, supra* in favor of such an approach in all situations where preemption by the Labor Management Relations Act is at issue.

While this Court has applied a more flexible approach to preemption in appropriate situations, this Court has never articulated that the underlying concepts of *Hill v. Florida, supra* and *San Diego Building Trades Council, supra* should be given less than full credence and effect in a situation where what is at issue is the very crux of the federal labor relations scheme. It must be reiterated that what is at issue here is whether a State can regulate the representational status of a labor organization representing employees in a major industry in interstate commerce. The State of New Jersey, by virtue of Section 93 of the Casino Control Act, has given itself the power to require union registration as a prerequisite to representa-

tional activity and further to curtail or terminate such activity by the institution itself if it or some of its officials fail to comply with various terms and conditions of the State Act. This is tantamount to a direct attack on the very core of the federal scheme to promote a cohesive policy of collective bargaining. It is of no merit in this regard, for the Appellants to claim that the real purpose of the State Act is to coerce the removal from office of disqualified individuals. This is nothing more than imposing by administrative determination another set of State criteria which must be met for the union as an institution to continue to function. Ultimately, all of the sanctions contemplated by the State Act, particularly those set forth in Section 93(b), are designed to coerce compliance with State imposed criteria by interfering with, barring, or terminating the representational activities of the union itself.

The only situation even remotely similar to the instant case where this Court has permitted state action of this type is that which was found in *Deveau v. Braisted*, 80 S. Ct. 1146 (1960). *Deveau*, involved a bi-state compact fully canvassed and approved by congress and this critically distinguishes *Deveau* from the instant case. In light of Congress' relationship to the compact, this Court concluded that the State legislation in issue did not conflict with rights protected by Section 7 of the Labor Management Relations Act, stating:

> In giving this authorization Congress was fully mindful of the specific provisions of § 8. Not only had § 8 already been enacted by the States as part of the Waterfront Commission Acts when the compact was submitted to Congress, but, in the hearings held before the House Committee on the Judiciary, it was specifically urged by counsel for the International

> Longshoremen's Association, as a ground of opposition to congressional consent, that approval of the compact by Congress would carry with it sanction of § 8. See Hearing before Subcommittee No. 3 of the Committee on the Judiciary, House of Representatives, 83rd Cong., 1st Sess. on H. R. 6321, H. R. 6343, and S. 2383, p. 136. The ground of objection to the section which is appellant's primary reliance here, namely, that it conflicts with existing federal labor policy, was urged as ground for rejecting the compact. *It is in light of this legislative history that the compact was approved, and that congressional consent was given to "enactments in furtherance thereof."* (80 S. Ct. 1146 (1960) at Page 1150)
> (Emphasis added).

> This is not all. As we have seen, § 8 was brought to the attention of Congress as part of the legislation which would come into effect as an adjunct to the compact, and the objection was raised at that time and not heeded that § 8 unduly interfered with federal labor policy. *Finally, it is of great significance that in approving the compact Congress did not merely remain silent regarding supplementary legislation not formally part of the compact. This provision in the consent by Congress to a compact is so extraordinary as to be unique in the history of compacts.* (80 S. Ct. 1146 (1960) at page 1152).
> (Emphasis added.)

It was in these unique circumstances, which are absent here, that this Court ruled that the State Act did not violate federal labor policy. In so ruling, however, this Court was careful to preserve the fundamental supremacy of federal labor policy as articulated by *Hill v. Florida*, supra, stating:

> The decision in *Hill v. State of Florida*, 325 U. S. 538, 65 S. Ct. 1373, 89 L. Ed. 1782, in no wise obstructs this conclusion. *An element most persuasive here, congressional approval of the heart of the state legislative program explicitly brought to its attention, was*

> *not present in that case.* Nor was it true that *Hill v. State of Florida,* as it is here, that the challenged state legislation was *part of a program, fully canvassed by Congress through its own investigations,* to indicate a legitimate and compelling state interest, namely, the interest in combatting local crime infesting a particular industry.
> (80 S. Ct. 1146 (1960) at page 1154, emphasis added.)

Absent such unique circumstances, where a State purports to regulate whether a labor organization can function as a collective bargaining agent for thousands of employees employed in a major industry in interstate commerce, such action must be deemed an impermissible intrusion into rights guaranteed by Section 7 of the Labor Management Relations Act.

Even assuming arguendo that the preemption doctrine requires that a balancing test be applied, it is clear that the resolution thereof requires the affirmation of the judgment of the Third Circuit. This Court's most current articulations of the preemption doctrine are found in *Belknap v. Hale,* 103 S. Ct. 3172 (1983) and *Local 926 International Union of Operating Engineers v. Jones,* 103 S. Ct. 1453 (1983), neither of which involve an attempt by a state to regulate the representational status of a labor organization.

In *Belknap, supra,* this Court reaffirmed that pursuant to *San Diego Building Trades Council v. Garmon, supra,* state regulations are presumptively preempted if they concern conduct that is actually or arguably prohibited or protected by the Labor Management Relations Act. The state regulation, however, can be upheld if the behavior to be regulated is of deeply rooted local concern. In such cases, the State's interests are balanced against both the interference with the NLRB's ability to adjudicate con-

troversies within its jurisdiction and the risk that the state will sanction conduct which is protected by the Labor Management Relations Act. This Court further states, however, that:

> Under *Garmon*, a State may regulate conduct that is only of peripheral concern to the Act or which is *so* deeply rooted in local law that the Courts should not assume that Congress intended to preempt the application of State law. (103 S. Ct. 3172 at 3182, emphasis added.)

In *Local 926, supra*, this Court further stated:

> The question of whether regulation should be allowed because of the deeply rooted nature of the local interest involves a sensitive balancing of any harm to the regulatory scheme established by Congress either *in terms of negating the Board's exclusive jurisdiction or in terms of conflicting substantive rules* and the importance of the asserted cause of action to the state as a protection to its citizens. (103 S. Ct. 1453 at 1459, emphasis added.)

> Beyond that, the preemption doctrine not only mandates the substantive preemption by the federal labor law in areas to which it applies but *also protects the exclusive jurisdiction of the National Labor Relations Board over matters arguably within the reach of the Act.* (103 S. Ct. 1453 at 1461, emphasis added).

In the instant case, the State of New Jersey has empowered itself to determine whether a labor organization otherwise certified as a collective bargaining agent under policies and procedures established by the Labor Management Relations Act and National Labor Relations Board shall be permitted to continue to function in such a capacity. This is a clear intrusion into an area within the Board's exclusive jurisdiction and which cannot be deemed

a matter of deeply rooted local concern. What is at issue is the ability of a union duly authorized to act as collective bargaining agent pursuant to the policies and procedures of the NLRB and Labor Management Relations Act to continue to act in such a capacity.

In addition, the state policies and concerns underlying State action in this area are designed to curtail rather than enhance the free choice by employees of a collective bargaining agent thereby conflicting with the policies set forth under the federal act. This intrusion goes to the very core of the entire federal labor relations scheme. The result is that an otherwise duly selected and certified labor organization can find itself prevented from acting in a representational capacity in furtherance of state interests which are totally unrelated to the concerns and policies of the Act. This can serve only to thoroughly disrupt and dismantle the process of collective bargaining and contract administration which are the fundamental underpinings for the entire federal labor regulatory scheme. Such an intrusion cannot be minimized. The net result is labor relations chaos in a major industry in interstate commerce.

In contrast, absent Section 93 of the Casino Control Act, the State of New Jersey still has ample means to serve the State interests of preventing corruption of the casino industry via illegitimate labor related activities. The State has at its disposal its criminal laws of general application, proscriptions found in the Labor Management Reporting and Disclosure Act, 29 U. S. C. § 401 et seq, the Rackateer Influenced and Corrupt Organizations Act, 18 U. S. C. § 1961 et seq., and the Hobbs Act, 18 U. S. C. § 1951 et seq., to meet these needs. In addition, the State

can certainly exercise its police powers to promulgate additional legislation which serves its purposes but which does not intrude into a highly sensitive area of federal concern involving the selection of collective bargaining agents.

Accordingly, assuming arguendo, that a balancing test is even appropriate when the intrusion by the State is such that is found here, the balance should be resolved in favor of the supremacy of the federal Act and Section 7 rights thereunder.

2. It is Well Established that the States Cannot Regulate the Administration of Employee Benefit Funds Which are Regulated Under ERISA.

Section 514(a) and (c) (1) of ERISA, 29 U. S. C. 1144 (a) and (c) (1), respectively state in their relevant parts ". . . the provisions of this title . . . shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan . . ." (29 U. S. C. 1144 (a) and "the term State law includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any state." (29 U. S. C. 1144(c) (1)).

The express language of Section 93(b) of the Casino Control Act demands that ERISA preemption be applied. Section 93(b) clearly states that it purports to regulate the administration of health and welfare and pension funds. This clear and unequivocal indication of State legislative intent suffices to bring it into the purview of Section 514 of ERISA.

This Court, in *Alessi v. Raybestos-Manhattan, Inc.*, 68 L. Ed. 2d 402 (1981) made salient the scope of preemption intended by Section 514, stating:

> This provision demonstrates that Congress intended to depart from its previous legislation that "envisioned the exercise of state regulations over pension funds," *Maloney v. White Motor Corp.*, 435 U. S. 497, 512, 514, 55 L. Ed. 2d 443, 98 S. Ct. 1185 (1978) (plurality opinion), and meant to establish pension plan regulation as exclusively a federal concern. (68 L. Ed. 2d 402 at p. 416)

Accordingly, Section 93 of the Casino Control Act is preempted to the extent it purports to regulate the administration of employee benefit plans.

It is of no import that Section 93 is part of a statutory scheme ostensively designed to regulate casino gambling. This Court, in *Alessi, supra,* further stated:

> It is of no moment that New Jersey intrudes indirectly, through a workers' compensation law rather than directly, through a statute called "pension regulation." ERISA makes clear that even indirect state action bearing on private pensions may encroach upon the area of exclusive federal concern. For the purposes of the preemption provision, ERISA defines the term State to include "a State, or any political subdivision thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this title." 29 U. S. C. Section 1144(c) (2) [29 UCSC Section 1144 (c) (2)] (emphasis added). ERISA's authors clearly meant to preclude the States from avoiding through form the substance of the preemption provisions. (68 L. Ed. 2d at 402 at Page 418).

Similarly, the real issue at hand and the practical impact of Section 93(b) cannot be masked by labelling it a State regulation of gambling. Further, the Appellants cannot justify this aspect of Section 93 by contending that it is really designed to merely force the removal from

office individuals who are deemed to be disqualified. To the extent that a Union is involved in the administration of jointly administered employee benefit funds, either by the selection of union trustees to the funds or in any other manner, this is an area preempted in its entirety by ERISA.

CONCLUSION

For the reasons stated above, it is submitted that the Appellants have not presented questions which are substantial in nature and that the decision of the Third Circuit should be affirmed.

Respectfully submitted,

MERANZE, KATZ, SPEAR & WILDERMAN

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*Counsel of Record

Dated, October, 1983

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No. 83-498

IN THE

Supreme Court of the United States

October Term, 1983

G. MICHAEL BROWN, DIRECTOR DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, STATE OF NEW JERSEY; DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, STATE OF NEW JERSEY and THOMAS KEAN, GOVERNOR, STATE OF NEW JERSEY and THOMAS KEAN, GOVERNOR, STATE OF NEW JERSEY,

Appellants,

v.

HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 54 and FRANK GERACE, PRESIDENT, HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 54,

Appellees.

On Appeal from the United States Court of Appeals for the Third Circuit

EXHIBITS IN SUPPORT OF MOTION TO AFFIRM

APPENDIX

P-5 AFFIDAVIT OF MICHAEL GANTERT

AFFIDAVIT

State of New Jersey |
| ss
County of Atlantic |

My name is Michael Gantert and I reside at 29 South Webster Street, Naperville, Illinois. I am the Executive Vice President and Chief Operational Officer of William L. Meyers, Incorporated and have served in this capacity for the last two years. I have been an officer of this corporation since 1975 and further have been personally involved with providing consultation services to and participating in the administration of employee benefit plans since 1974.

William L. Meyers is a corporation in the business of supplying employee benefit plan consultants and also participates in the administration of such plans. Among those plans with which we are involved are the Hotel Employees and Restaurant Employees and Bartenders International Union Pension Fund as well as the Hotel Employees and Restaurant Employees and Bartenders International Union Health & Welfare Fund. LOCAL 54 is a Collective Bargaining agent representing employees who are participants in these funds and is involved in the Hotel Employees and Restaurant Employees and Bartenders International Union Pension Fund as well as the Hotel Employees and Restaurant Employees and Bartenders International Union Local 54 Health & Welfare Plan which is

one of several plans within the International Health and Welfare Fund.

LOCAL 54 and its officers participate in the operation of these funds on a daily basis by virtue of their negotiation of various collective bargaining agreements with various contributing employers and accordingly LOCAL 54 is a sponsor of these benefit plans. There are approximately 10,000 members of LOCAL 54 who participate in these plans, approximately 8,000 of which are casino hotel employees and approximately 2,000 of which are non-casino hotel employees.

LOCAL 54 is directly involved in these benefit plans in that the benefits provided are created as a result of collective bargaining agreements negotiated between LOCAL 54 and various employers. These negotiation and subsequent contracts define the level of contributions to be made on behalf of participating employees as well the classes of employees who are covered by said contributions and entitled to benefits as a result thereof. Furthermore, since an employer's obligation to pay contributions is based on the contract negotiated by LOCAL 54, LOCAL 54 is looked to by these funds for the proper interpretation and application of the contracts to determine the contributions which are due to the funds thereunder.

The governing board of these funds is comprised of a Board of Trustees. LOCAL 54 participates in the Board of Trustees by virtue of Frank Gerace, President of LOCAL 54 who is a Union Trustee of both the Health and Welfare and Pension Funds. Furthermore, LOCAL 54 and the contributing employers form a Local Coordinating committee which investigates, analyses and recommends

to the Fund Consultants the level of benefits to be provided under these plans.

Relative to the Health & Welfare Plan, if contributions from participating employers would cease, the plan would terminate since there would be no contributions to provide future benefits. Only those claims which had been filed up to the date of cesation of contributions could be honored. If contributions were to cease on behalf of LOCAL 54 members, the Local's Health & Welfare Plan would simply cease to exist. If contributions were to cease relative to the members of LOCAL 54 who are employed by casino hotel employers, there would be a termination of all Health & Welfare Benefits for the casino hotel employees represented by LOCAL 54 and their dependents. This would also impact adversely on the members of LOCAL 54 who are employed by non-casino employers in that there would be a drastic reduction in benefits for said employees because of the concept and structure of group insurance plans.

Relative to the Pension Plan and benefits, a cesation of contributions by participating employers, such as casino hotel employers, would trigger the complete withdrawal of said employers from the Pension Plan under ERISA and Multi-Employer Pension Act rules and regulations. This would result in withdrawal liability on the part of these employers. Furthermore, all Casino hotel employees who did not have ten years of service and participation in the Pension Plan would lose all of the benefits which they had accrued to date. In addition, a cesation of contributions by casino hotel employers would impact on all of the other employers across the country who contribute to the plan including the non-casino employers with whom LO-

CAL 54 has contracts and who are obligated to contribute to the Pension Plan. Under the terms of the plan, if any individual casino employer's withdrawal liability was less than 100,000.00, said employer would be relieved of this liability and it would be passed on to the liabilities of the remaining employers.

The impact of the cesation of contributions and the loss of benefits resulting therefrom would affect not only the members of LOCAL 54 but also their dependents. There are currently approximately 10,000 members covered by LOCAL 54 Health and Welfare plan and at least 20,000 individuals, including dependents who actually receive the benefit of this plan. Relative to the International Pension Plan, there are approximately 30,000 participants all over the country, including the members of LOCAL 54, and approximately 2500 contributing employers.

The benefits with the plan participants and their beneficiaries receive and which will be terminated by the cesation of the payment of contributions by casino hotel employers are described in full by the attached summary plan descriptions for the Health and Welfare Pension and Dental Plans which are attached hereto as exhibits A and B.

Both plans are section 302 Taft Hartley Plans and are subject to the regulatory provisions of the Employee Retirement Income Security Act.

I have read the above statement, of which there are four pages, and I hereby swear that the contents hereof is true and correct to the best of my knowledge and belief.

/s/ Michael Gantert

Sworn and subscribed before me
this 27th day of November, 1981
/s/ GERTRUDE A. WALDT
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires June 8, 1984

(SEAL)

P-6 AFFIDAVIT OF LINDA ATENE

State of New Jersey |
ss
County of Atlantic |

AFFIDAVIT

LINDA ATENE, of 1608 Acorn Place, Clementon, New Jersey, being duly sworn according to law deposes and says that the following facts are true and correct to the best of her knowledge, information and belief. She is an employee of Local 54, Hotel Employees Restaurant Employees AFL-CIO, and works as a job dispatcher. Said position is created as a result of the requirement in the collective bargaining agreements maintained with the hotel casinos that Local 54 structure, maintain, and conduct a hiring hall and exclusive job referral service. In that capacity, deponent is the actual dispatcher who receives telephone calls from the personnel offices of the various hotel casino and other employers, requesting referral of people in the classifications necessary for an interview for hiring on a job. All employees in the bargaining units of the collective bargaining agreements must be hired in this manner. Dependent, as the dispatcher, conveyes the order for employees to four additional clerical employees, who register applicants, and thereafter make telephone

calls seeking available employees, forward the names to dependent who in turn advises the appropriate personnel offices, which then confirm to deponent that the people referred to for interview have been found qualified or, if not, request deponent on behalf of Local 54 to forward additional persons for employment.

Deponent dispatches approximately 75 employees a day for jobs during the normal season and to the best of deponent's estimation, approximately 15,000 persons a year are dispatched and hired in full time capacities in the various hotel casinos pursuant to the hiring hall and referral services. All of the jobs are normally full time jobs, but there is a substantial job turn over which requires repetative referral in order to maintain both the employment continuity, and the services required by the employer. All of the employees responsible for the duties of the hiring hall and job referrals are full time employees of Local 54 and their wages and fringe benefits are totally dependent upon the union's ability to make such payments, which ability in turn is dependent upon the dues income, most of which comes from the casino hotel industry. In addition, the duties of the hiring hall and referral services operate from the union hall and the extensive facility provided therein is essential to the operation of this service, as are the extensive telephone facilities which similarly are provided.

/s/ Linda Atene

SWORN TO AND SUBSCRIBED
TO THIS 27th DAY
OF NOVEMBER 1981.

/s/ GERTRUDE A. WALDT
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires June 8, 1984.

(Seal)

P-7 AFFIDAVIT OF CAROLYN BISHOP

State of New Jersey |
ss
County of Atlantic |

AFFIDAVIT

CAROLYN M. BISHOP, of 1820 Lincoln Avenue, Atlantic City, New Jersey, being duly sworn according to law deposes and says that the following facts are true and correct to the best of her knowledge, information and belief. She is a full time employee of Local 54, Hotel Employees Restaurant Employees AFL-CIO, and serves in the full time capacity of a grievance hearing coordinator. Deponent's job consists of coordinating all written grievances on behalf of members of Local 54, whether or not they result in hearings. In that capacity, deponent is not only fully personally familiar with all of the records of grievances, but has participated exclusively in the allocation of servicing of such grievances to the respective business agents, and the coordinating and correlating of such grievances throughout the various steps of the grievance procedure into the arbitration process. The grievance procedure is found in the various collective bargaining agreements of all of the casino hotels as well as the collective bargaining agreements of non casino hotels. From January 1, 1981 to October 31, 1981, there have been approximately 900 to 1,000 employee member grievances processed by Local 54 against alleged abuse of rights by employers in the casino hotel industry. In addition to this number of grievances, there are approximately one-quarter that number normally processed which do not reach the written stage but are resolved at the first

pregrievance level as the result of verbal discussions and communications. Grievance processing is the only means under the collective bargaining agreement for protecting the rights of employees, and the obligations due them by the employers, and of protecting them from unjust discipline, violation of seniority rights, violation of classification rights, improper denial of wages due and other conditions protected by the labor contract. These conditions include transfer rights, shift change rights, vacation benefits, vacation selections, and all of those matter to which reference is made in the labor contract, one of which is attached hereto and marked Exhibit 1.

Similar collective bargaining agreements with the same type of grievance and arbitration procedures appear in all of the casino hotel contracts, and in most of the collective bargaining agreements of non casino hotel employers. Of the between 900 and 1,000 written employee member grievances processed from January 1, 1981 to October 31, 1981, approximately 275 involved the alleged improper termination of employment, and during said period of time, there were dozens of grievances involving pay disputes, shift changes, seniority violations, and all other disagreements under which employees had complaints which required processing.

In addition to the processing of grievances, deponent is responsible for making certain that some tracking is kept of those cases which go to final, impartial, and binding labor arbitration. In this regard, there have been since January 1, 1981 to October 31, 1981 in excess of 30 grievances so referred, a number of which have completed formal hearings before outside impartial arbitrators. By virtue of the actions of Local 54 in processing grievances

in the grievance procedure, and by virtue of grievance resolutions as well as arbitration awards in the year 1981 to date, there have been recovery of damages for the benefit of members in excess of $200,000, all of which has been distributed to those members whose rights have been in this calendar year, found to be violated.

In providing the coordination and servicing of the grievance procedure, deponent aids nine full time business agents, whose job it is to actually perform the service of grievance adjustment, and at the present time, deponent has a co-hearing coordinator, who serves a similar function. Because of the sheer number of problems that have to be handled, the work which hitherto was deponents exclusively is now being shared by a co-employee.

Deponent and her co-employee, Mary Anne Garrity, as well as all of the business agents and all of the officers and other representatives who perform the services of the grievance procedure are full time employees of the union who depend upon wages and fringe benefits for their daily livelihoods which wages and fringe benefits are derived solely from the union dues paid by members to Local 54. In addition, the costs of the impartial arbitrators, the costs of the attorneys required to represent the union in the grievance and arbitration procedure and all related costs are borne solely by the union treasury, which is made up completely of income derived through the payment of union dues. In the event of a cessation of dues income, there would no means to continue the representation as aforementioned, and there would be a denial to thousands of employees of protection against unjust discharge, lose of seniority rights, fringe benefits,

employment opportunities, and the other rights secured by the contract.

/s/ Carolyn M. Bishop

SWORN TO AND SUBSCRIBED
TO THIS 27th
DAY OF NOVEMBER, 1981.
/s/ GERTRUDE A. WALDT
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires June 8, 1984.
(Seal)

P-8 AFFIDAVIT OF GAIL BOLTEN BROWN

State of New Jersey |
| ss
County of Atlantic |

AFFIDAVIT

GAIL BOLTEN BROWN, of 508 North South Carolina Avenue, Atlantic City, New Jersey, being duly sworn according to law deposes and says that she is fully authorized to take this affidavit and that all of the following facts are true and correct to the best of her knowledge, information and belief.

Deponent is an employee for Tex-Com Inc., a data processing service which provides the requisite data processing and keeping of the necessary books and records for the Local 54 Hotel Employees Restaurant Employees Severance Fund. The Severance Fund is a jointly administered employee benefit fund, which exists pursuant to the collective bargaining agreements in all of the hotel casinos as well as some non casino collective bargaining agreements. The Severance Fund covers 10,000 casino em-

ployees. A copy of the Trust Agreement for the Severance Fund is attached hereto and marked Exhibit 1.

There are presently six trustees who conduct the business of the Severance Fund and are responsible for all decision making. Three of the trustees are from the union sponsors of the Fund, and three of the trustees are from the employer sponsors of the Fund the three union trustees are Frank Gerace, President of Local 54, Evelyn Zarus, Secretary-Treasurer of Local 54, and Al Daidone, Vice President of Local 54. Local 54 under the trust agreement and in fact has the sole responsibility to name the trustee.

Under the collective bargaining agreement, Local 54 bargains with employers for a set contribution to the Severance Fund, which currently in the casino hotel contracts is $.15 per hour per employee. The trustees are responsible for the day to day functioning of the Fund, the collection of delinquencies, the setting of policy, and the ascertaining of proper investments and return on the monies for the protection and benefit of the beneficiaries.

The Local 54 Severance Fund is subject to reporting requirements under the Employee Retirement Income Security Act and to the extent of being so subject, complies with such requirements, in addition to having complied with the necessary qualifications under the Internal Revenue Service regulations. This Fund is solely a Local 54 matter with its employers, and is not in any way related to any of the Funds of the International Union.

/s/ Gail Bolten Brown

Sworn to and Subscribed to this 27th day of November, 1981.

/s/ Gerturde A. Waldt

(SEAL)

P-9 AFFIDAVIT OF ANNA MARY DITMIRE

State of New Jersey |
| ss
County of Atlantic |

AFFIDAVIT

ANNA MARY DITMIRE, of 214 Ocean Heights Avenue, Somers Point, New Jersey, being duly sworn according to law deposes and says that she is authorized to take the instant affidavit and that all of the following facts are true and correct to the best of her knowledge and belief.

Deponent is employed as the office manager of Local 54, Hotel Employees Restaurant Employees AFL-CIO, and has held that capacity for the past two and a half years. Prior to that time deponent was the bookkeeper for said local union since the early 1970's and prior to that time was employed by the predecessor union to Local 54, Local 508.

Deponent's duties as office manager include participating in every aspect of the union's activity from the point of view of office management, overseeing employees, participating in reports, being responsible for costs and expenditures, and all of the other duties relating to responsibility for the day to day functioning of the institution. In that regard, deponent is fully familiar with all of the records of the local union, and has participated in the normal course of such record keeping on a day to day basis, and has overseen and does oversee such record keeping by others. Deponent is further familiar with the full scope of the union's activities, and the history of Local 54.

Local 54 is a successor to two prior local unions in the same geographic area, i. e., Local 508, which was chartered in 1918, and Local 491, which was chartered in 1902, as well as Local 170, which was chartered in 1940. Local 54's geographic jurisdiction bestowed upon it by virtue of its International Union's Charter is Atlantic, Cape May, and Ocean Counties as well as all areas between such counties and the Delaware River including, Cherry Hill, New Jersey. Its traditional historic jurisdiction had commenced as Atlantic and Cape May Counties and it has always, pursuant to International Charter, occupied such geographic jurisdiction. The local union exists, not only pursuant to its own Constitution and Bylaws, but also pursuant to the International Union Constitution of which it is an affiliate, a copy of which is attached hereto and marked Exhibit 1.

Local 54 exists for the purpose of representing employees in the hotel, restaurant and bartending and related industries in the capacities of housekeeping, kitchen, culinary and service work, and is chartered for the purpose of representing such employees for purposes of wages, hours and working conditions. Employees participate in the functioning and affairs of Local 54 and participate in the formulation of contract proposals and contract ratification.

There are presently approximately 12,000 members of Local 54, of which approximately 8,000 are members employed in the Atlantic City Casino Hotels, and the balance are employed in various non casino hotels, restaurants, bars, amusement parks, and related activities. Most of said members are covered by collective bargaining agree-

ments negotiated with their employers which set forth the wages, hours, and working conditions regulating their industry as well as the dues paying obligations, and the various employee fringe benefit requirements and protections. In the casino hotel industry there is a relatively standard collective bargaining agreement, which contains for each of the present eight functioning casino hotels, similar wages, hours, and conditions. A copy of a typical Casino Hotel Collective Bargaining Agreement is attached to and marked Exhibit 2.

The remaining casino hotel collective bargaining are either identical or substantially identical and in all areas of relevance to the instant affidavit are specifically the same. All of the eight presently operating casino hotels in Atlantic City are under contract with Local 54, and all of the employees in the described bargaining unit are members of Local 54.

Local 54, in order to provide the service required for its membership, maintains 38 full time officers, business agents, and employees, at a payroll cost which is currently in excess of $12,000 a week. Local 54 also owns a union hall and building which is used for its offices, headquarters, and meeting rooms on which there exists a mortgage in the amount of $337,000. The total monthly budget for the operation of all of Local 54's services including the required per capita payment to the International Union is approximately $120,000 a month. The sole income received by Local 54 comes from union dues and initiation fees, in which the total amount, consisting primarily of dues, is approximately $130,000 a month, of which approximately 85% comes from the membership dues paid by members employed in the casino hotels.

The average per capita dues payment per month on behalf of individual members to the International Union is $3.000 or approximately $33,000 a month.

Attached hereto and marked Exhibit 3, is the 1980 "LM-2" required by virtue of the Labor Management Reporting and Disclosure Act of 1959, which provides a reflection of last years operating budget.

In the event of a failure to pay per capita tax to the International Union which payment comes strictly from the dues paid by members, the International Union is compelled to exercise a trusteeship, and cease the charter of the local union; those members in whose behalf there is not a good standing payment to the International Union, will lose good standing and with it lose their International Union membership, their death benefits, and their transfer rights to other local unions.

In the event of a cessation of dues income to Local 54 from the hotel casinos, it will be impossible to maintain the union hall, to service the union membership either in the casino hotels or in the non casino hotel areas, and as a result the collective bargaining agreements will not be enforceable. The monies and income of Local 54 are extended solely for the salaries and benefits payable to those persons who provide the services to the membership, and to all of the expenses necessary in order to administer collective bargaining agreements, bargain for new collective bargaining agreements, organize the unorganized, process grievances, and perform the other responsibilities of a collective bargaining agent.

Local 54 files the required LM-1 and LM-2 Reports under the Labor Management Reporting and Disclosure Act. Moreover, as required by said act and by the Consti-

tution and Bylaws, the membership nominates and elects by secret ballot all officers of the local and votes on ratifications and rejections of labor contracts.

/s/ Anna Mary Ditmire

SWORN TO AND SUBSCRIBED
TO THIS 27TH DAY
OF NOVEMBER, 1981.
/s/ Gertrude A. Waldt
Notary Republic

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In fact, I would ask that the court take judicial notice of the fact that the National Labor Relations Board in fact assumes jurisdiction of each of these hotel casinos and in fact conducts representational and unfair labor practice proceedings and has conducted them through the decision and election and I so represent to the court and the court can take judicial notice of these following cases: Number —Caesar's Boardwalk Casino, 4RC14273; Caesar's Boardwalk Casino, 4RC14406; 4RC13987; 4RC13768; 4RC13845; Resorts International, 4RC13549; 4RC13508; 4RC14050; 4RC13232; 4RC13911; Bally Park Place, 4RC14160; 4RC14095; 4RC14162; 4RC14233; 4RC14496; 257NLRB number 132; Brighton, now the Sands, 4RC14326; 4RC14471.

I ask you to take judicial notice and by taking those documents the state similarly stipulates that the National Labor Relations Board has in fact exercised representational jurisdiction in unfair labor practice jurisdiction over the casinos, as a matter of fact. You don't have to lump them together—

The Court: Any objection to that?

Mr. Parrillo: I haven't seen any of the documents he has referred to.

The Court: I will offer you the opportunity.
